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**Memorandum**

**To:** Minerals Management Service, MS 5412  
1201 Elmwood Park Boulevard  
New Orleans, LA 70123

**Subject:** Comments on EIS Scoping for the LIOWP Project

**From:** Cashin Spinelli & Ferretti, LLC (CSF)  
John M. Ellsworth, Director of Planning and Environmental Services

**Date:** August 21, 2006

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This memorandum is submitted by Cashin Spinelli & Ferretti, LLC (CSF) on behalf of the Town of Oyster Bay. CSF is an environmental consultant to the Town, and we have been requested by the Office of the Town Supervisor to provide comments regarding the scope of the draft EIS for the proposed Long Island Offshore Wind Park (LIOWP) project.

The following is a summary of issues which we respectfully request be addressed in the forthcoming DEIS:

**Procedural Issues**

1. The DEIS should describe in detail the regulatory review and permitting process that will apply to the LIOWP, including the specific role to be played by each involved agency, as well as the weight that will be given to input received in comments from interested parties during the various stages of this process. This discussion in the DEIS should be directed at addressing a common public criticism regarding projects of this nature (in which predominant regulatory authority lies with state and/or federal agencies), that the review and decision-making process does not pay sufficient attention to local concerns.
2. The MMS is in the process of developing procedures for the review of projects involving use of the outer continental shelf (OCS) for renewable energy projects, and is undertaking a Programmatic EIS in connection with this policy initiative. However, the LIOWP (as well as the proposed Cape Wind project in Nantucket Sound) has been granted a special exemption which is allowing the review of this application to proceed separately, before the new OCS procedures are in place. The LIOWP EIS should: (a) discuss the specific circumstances and considerations that led to the issuance of the exemption for this project, and the specific mechanism by which this exemption was granted; and (b) analyze the benefits and drawbacks associated with allowing this project to proceed before the Programmatic EIS has been completed and the new OCS procedures are in place. This analysis should address the timing of the exemption for the subject application, accounting for the fact that this decision was issued in the early stages of the proposed LIOWP project, presumably before substantial capital had been expended by the project sponsors.

3. The Public Notice that was issued in June 2005 by the U.S. Army Corps of Engineers in regard to the LIOWP indicates that approvals will be required from a number of New York State agencies, including the Public Service Commission (Article VII Certificate of Environmental Compatibility and Public Need), Office of General Services (easement), and Office of Parks, Recreation and Historic Preservation (easement). It appears that LIPA also is an involved State agency relative to this matter, since they will undertake the “action” of entering into a long-term contract with FPL to purchase 100 percent of the power generated by this project. All of these New York State agencies are required to comply with the provisions of the State Environmental Quality Review Act (SEQRA).

The MMS previously had indicated to the Town of Oyster Bay that the DEIS for the LIOWP will be written to satisfy the requirements of SEQRA, as well as the National Environmental Policy Act (NEPA) under which the MMS and other federal agencies are governed. It is noted, however, that the SEQRA regulations – as promulgated in Part 617 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York – specify that:

“If scoping is conducted, the project sponsor must submit a draft scope that contains the items identified in paragraphs 617.8(f)(1) through (5) of this section to the lead agency. The lead agency must provide a copy of the draft scope to all involved agencies, and make it available to any individual or interested agency that has expressed an interest in writing to the lead agency.”  
[6 NYCRR §617.8(b)]

It does not appear that the foregoing requirement has been fulfilled in the present case. This represents a substantive omission, rather than merely a procedural lapse, since the availability of a draft scoping document serves to facilitate public participation during the initial phase of an EIS process. The absence of a draft scoping document makes it more difficult to formulate focused commentary regarding the information and analyses that should be included in the DEIS, since there is no definitive starting point on which to base one’s review.

4. In light of the foregoing apparent oversight with regard to the regulatory requirements for the SEQRA process, it is urged that the MMS coordinate closely with the involved New York State agencies in order to ensure that future activities, including those pertaining to the forthcoming DEIS, satisfy the provisions of both the SEQRA regulations and the implanting regulations for NEPA.
5. It is noted that the requirements of SEQRA includes the issuance of a final scoping document, pursuant to 6 NYCRR §617.8(f).

#### **Description of the LIOWP; Project Purpose and Need**

6. It is expected that the discussion of project purpose and need in the forthcoming DEIS will place appropriate emphasis on the benefits to be derived from the LIOWP’s use of a renewable energy source. However, in order to ensure that this analysis is balanced and complete, the DEIS also should include a detailed quantitative assessment of the proportional contribution that the proposed project will make to LIPA’s overall comprehensive energy strategy, including the pending Neptune Regional Transmission System (which will carry 660 megawatts of power via a cable from New Jersey) and other projects that are under construction or proposed.
7. The DEIS should provide a detailed accounting of the expected construction cost and annual cost of maintenance for the proposed project.



8. The DEIS should provide detailed calculations of: (a) the expected power output and unit cost for energy generation from the proposed project, as compared to LIPA's current unit energy costs; and (b) the associated benefits related to the avoidance of impacts from combustion of the equivalent amount of fossil fuel. These analyses should account for energy delivery during anticipated **average** operating conditions over the life of the project, rather than peak design parameters, and should be based on relevant, available empirical data regarding energy delivery from analogous wind turbine facilities already in operation, adjusted as necessary to account for differences in site-specific and project-specific conditions. All assumptions should be clearly stated.
9. The DEIS should include a detailed quantitative analysis of the full range of the anticipated economic benefits of the proposed project, including, but not limited to: lease fees derived from the private use of public underwater lands, addressing not only the amount of these fees over the life of the LIOWP, but also the degree to which these monies would be returned to the project area to compensate for impacts incurred; tax revenues or PILOT payments, as divided among the various levels of government receiving this income; and the effect that this project will have on service costs to LIPA customers.
10. The DEIS should evaluate the availability of qualified maintenance technicians to serve the proposed project, and should analyze any special maintenance requirements related to the location of the LIOWP turbines in the Atlantic Ocean (which involves exposure to harsher physical conditions and access issues that are different than for upland sites).

#### **Environmental Impact Issues**

11. One of the most important issues to the Town of Oyster Bay and its residents is the effect that the proposed project would have on the visual and aesthetic character of the Town's premier ocean-front public park facility at Tobay Beach, which is situated directly opposite, at a distance of less than four miles from, the westerly end of the proposed array of wind turbine generators. The preliminary simulations provided in connection with the Public Notice issued in June 2005 by the U.S. Army Corps of Engineers were limited to views from Jones Beach State Park and Gilgo Beach in the Town of Babylon. It is requested that the DEIS include a detailed simulation analysis from the vantage of Tobay Beach. This analysis should be based on a worst-case scenario of atmospheric conditions that maximize visibility.
12. The DEIS's assessment of viewshed issues should extend beyond a technical simulation analysis, and should seek to meaningfully address the more subjective aspects of this issue including, for example, the perception of the ocean as being a public place and of the uninterrupted oceanic horizon as having special aesthetic importance.
13. According to information available at this time to the Town of Oyster Bay, it appears that the upland cable route for the proposed project would occupy Town-owned rights-of-way. The DEIS should provide a full and detailed analysis of the anticipated impacts of cable installation in these rights-of-way, including, but not limited to, the precise location and dimensions of the cable trench along its entire route, the timing and schedule of installation, the type of cable to be placed in the trench, and analysis of all impacts associated with this component of the proposed project and identification of the specific measures that would be implemented to mitigate these impacts. The DEIS also should include an evaluation of the electromagnetic fields that would be generated by electrical current transmission through this cable and the associated impacts to nearby residences.

14. It also is the Town of Oyster Bay's understanding that the proposed cable route would pass through the middle of the Town-owned park known as the "Field of Dreams" on Old Sunrise Highway in Massapequa, which facility recently underwent extensive improvements and currently experiences a high level of public use. The DEIS should closely examine the impacts that the proposed upland cable installation would have on this public park, particularly with regard to any physical disturbance of existing facilities or interruption of access or availability, as well as measures that will be undertaken to avoid or minimize these impacts.
15. Concerns have been raised regarding the potential impact that operation of the proposed wind turbines may have on homeland security systems, particularly radar and communications devices. Although it is clear that national defense considerations should be the primary focus of the DEIS's analysis of such impacts, appropriate attention also should be paid to any impacts that may result to electronic equipment used in commercial and recreational aircraft and vessels.
16. The DEIS should describe in detail the provisions for decommissioning the proposed facilities once their useful operating period has transpired. This should include delineation of the anticipated life span of the turbines, a description of the work that would be required to accomplish decommissioning of these structures and other system components, identification of the entity (or entities) that would be responsible for performing and overseeing this work, discussion of the regulations that govern these activities, and estimate of anticipated decommissioning cost.
17. Notwithstanding its large size, it seems likely that the LIOWP will in certain ways serve as a pilot project for possible future offshore wind projects. Accordingly, the DEIS should describe the protocols which will be established to evaluate the effectiveness of the LIOWP in determining the suitability of this technology for future projects in other offshore areas. To the degree possible, the DEIS also should identify other locations that are suitable for future phases of LIPA's offshore wind energy program and should provide at least a preliminary assessment of the cumulative impacts associated with the full implementation of this program.

### **Alternatives**

18. Because the range of possible alternatives that can be addressed in a DEIS is quite extensive, providing comments on this topic at this time is made significantly more difficult by the lack of a draft scoping document. However, the following categories of alternatives set forth in the SEQRA regulations, at 6 NYCRR §617.9(b)(5)(v), appear to be relevant to the proposed action:
  - a. **Sites** – The DEIS should analyze in detail other sites that were considered for the LIOWP project, with the objective of establishing that proposed location offers the best balance of benefits versus impacts among all the available sites.
  - b. **Technology** – The DEIS should examine the full range of other renewable energy options that would advance the goal of reducing dependence on imported fossil fuels. This analysis should include an evaluation of the capability of the various available alternative technologies to provide power during critical periods of peak consumption. If it is the applicant's position that LIOWP comprises part of a comprehensive strategy covering a range of renewable energy technologies, the DEIS should fully describe this strategy, including LIPA's commitment to the range of other available technologies in terms of projects that currently are in active operation, design, construction, or planning.

- c. **Scale or Magnitude** – The DEIS should examine an alternative that involves a significant reduction in project magnitude. If it is the applicant's contention that the current 40-turbine proposal is the minimum required for an economically feasible project, this should be substantiated with a suitable quantitative analysis.
- d. **Design** – The DEIS should explore any and all design alternatives that would reduce the impacts of the proposed facility, including, but not limited to, turbines that can be installed in deeper waters further offshore so as to reduce the visual impact of the project. This analysis should examine the type of system design that is involved in the pending Plum Island Wind Park demonstration project, where the turbines will be sited between 12 and 20 miles offshore, which would not only reduce the visibility of the turbines but also would take advantage of stronger winds that occur with increasing distance from the shoreline.
- e. **Timing** – The DEIS should analyze the actual need to undertake the proposed project at the present time, as opposed to deferring action until after: (a) the MMS procedure for the review of renewable energy projects on the OCS has been adopted; and (b) other emerging technologies, (including, but not limited to, those that would allow placement of turbines in deeper waters further offshore) reach a more advanced state of feasibility.

We appreciate the opportunity to provide comments for the MMS's consideration in finalizing the scope for the subject DEIS.

Please do not hesitate to contact me if you have any questions. I can be reached at 516-677-5824.

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c: Leonard Genova, Deputy Supervisor  
James M. Byrne, P.E., Commissioner, Department of Public Works  
Richard W. Lenz, P.E., Commissioner, Department of Environmental Resources  
Attention: Aldona Lawson, TEQR Division